



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200916035**
Release Date: 4/17/2009

Date: 1/23/09

UIL: 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 31, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.33-00

Legend:

Foundation =
LLC =
Date 1 =
State =
Aunt =
M =
Website =
Family =
Nephew 1 =
Niece 1 =
Nephew 2 =
Niece 2 =
Letter 1 =
Letter 2 =
Letter 3 =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

FACTS:

LLC filed Articles of Organization on Date 1 in State. Shortly thereafter, according to State records, LLC was dissolved by consent of its members. Subsequently, you filed an application for exemption. Following your filing of the Form 1023 application, you incorporated as a State non-profit organization having the same purpose as LLC. According to your Articles of Incorporation, you are organized (1) to provide awareness through creativity, history and technology; (2) to bridge economic and cultural gaps between classes, ethnicities, and generations; and (3) to build on the legacy of Aunt, who is a historical figure, as a gift to all, and

future ones to come.

According to your Form 1023 application, your primary purpose is to promote Aunt's legacy through the following types of activities: (1) the provision of funds for the construction and operation of a museum and library (2) operation of a website, (3) participation in speaking engagements, and award acceptance on behalf of Aunt (4) grants to individuals in the form of scholarships and (5) community development and self-awareness activities.

Your membership is limited to individuals who are the nieces or nephews (or their decedent's) of Aunt. The only other way to become a member is by a majority vote of your members. There is also an annual \$20 membership fee.

You are governed by a board of directors, all of whom are nieces and nephews of Aunt.

You represented that one of your primary activities would be the construction and operation of M, which you describe as a library, museum and educational center available for use by the general public. You indicated that M has not yet been built nor have any construction contracts been entered into. Furthermore, you submitted documentation to show that M was incorporated as a separate non-profit organization in State. The Articles of Incorporation for M provide that it is organized as a "library, museum, and self-improvement of leadership skills of young adults." You stated that, M will file its own application for recognition of exemption, but has not yet done so.

In Letter 1, the Service asked you to "explain the nature of your relationship with M." Your response letter provided the following: "The exact relationship between Foundation and M would be construction costs and operating expenses, once M is built." When asked to describe in more detail the projected operations of M including, but not limited to, operating hours, admission, membership, benefits and staff, your response was that this information was "TBD."

In Letter 2, the Service again asked you to explain your role in the construction of M and its operation once completed. In your response, Letter 3, you provided that "My role in M will be filed under separate application."

In Letter 2, the Service also asked you to provide a budget detailing the projected expenses involved in the construction and operation of M; you stated in your response that the budget would be provided under separate application.

You represented that another one of your activities would be the operation of Website where memorabilia related to Aunt would be sold. In Letter 1, the Service requested more detailed information as to the type of memorabilia being sold on Website, the price of the items and the percentage of time you would spend selling items on the website. You responded that the "family website" will be used primarily to provide history and inform the public of Aunt's legacy as well as to sell memorabilia related to Aunt. You stated and provided documentation to show that Website was incorporated as for-profit LLC. Items sold on Website include t-shirts, paintings, and other items created by members of the family, prices will differ on item sold. You state that this activity will enhance the legacy of Aunt "as well as provide source of income for operating expenses for M." You did not provide the percentage of time and resources that you would use in conducting this activity nor did you provide any specific information on pricing or how you would determine the price of individual items.

You initially provided in your application that you would purchase, from members of the

organization, at fair market value, items such as 'designs, artwork, logos, poetry, [and] sheet music created by members.' You were asked to describe how you would determine that you paid no more than fair market value for items purchased as well as to describe the terms of any contracts made with members including how any such contracts would be negotiated at arms length. Rather than providing these details you responded by stating that you would no longer be purchasing such items from members.

Your Form 1023 application indicated that all of your directors are members of the Family, and are nieces and nephews of Aunt, and would receive compensation as independent contractors. Nephew 1, would receive compensation as a construction manager; Niece 1, would provide Tax Consultation services; Nephew 2, would provide Computer Consultation; and, finally, Niece 2, would provide Retail Consultation. When asked to describe these services in more detail as well as to provide more detailed information regarding the amount of compensation and how it would be awarded, you failed to provide any further detail and indicated that these family directors would no longer be providing the services initially described.

In Letter 1 you indicated that you would participate in speaking engagements, including award acceptance on behalf of Aunt as well as approval of events and other activities, building, or other structures erected in Aunt's honor. In Letter 2, you were asked to describe the percentage of time you would spend on speaking engagements. While your response included some estimates and other details about specific speaking engagements, you also stated in your response that "Speaking Engagements and Award Acceptance were made by my Niece 1 personal choice; therefore not in the capacity of Foundation President."

In addition to the above described activities, you indicated in your application, that you would conduct a scholarship program awarding \$1000 scholarships for deserving junior or senior high school, college or university students in a variety of fields. The purpose of the scholarship is to be a "vehicle in which students that endeavor to improve the quality of life of others and willing to enter a field of study that promote the values of [Aunt.]" To be selected, recipients must (1) complete a 1000 word essay (2) be a full-time student (3) provide two references from community leaders, high school counselor or local politician (4) be a junior or senior high school student or attending classes at an accredited college or university within the continental United States (5) agree to volunteer at M (6) secure and maintain a GPA of 2.0 and (7) interview with Selection Committee Panel. The award may be used for supplies, tuition, computer/software, books, transportation, housing, etc...or anything that pertains to their course of study and the grant does not need to be paid back if student is unable or can't comply with terms of scholarship. You would require recipients to teach, mentor and train younger students at M. Scholarships would be supervised under arrangements with individual schools.

You explained that the purpose of requiring the award recipients to teach, train, and mentor younger students as a requirement for the scholarship is to bring back the tradition of giving back to the community and to contribute to the quality of the student. Students could volunteer as a teacher's assistant or substitute teacher, or mentor a younger student. The number of hours would be arranged on an individual basis and the Selection Committee would be responsible for administering the program. The volunteer work would be completed at M. In some circumstances students may be reimbursed for expenses related to fulfilling this requirement. You stated, that "Reimbursement for housing, food, travel, or other expenses would be determined on an individual basis, and on the recommendation of the selection committee."

The scholarship selection committee would be comprised of six members selected by the board

of directors. Currently, your scholarship committee consists of seven members, three of whom are members of the Family and related to Aunt. Initially you provided that relatives of members of the selection committee, officers, directors or substantial contributors would be eligible for awards under your scholarship program. You provided that such relatives "must qualify as any other recipient." When asked to explain how you would resolve conflicts of interest to reach an unbiased decision in selecting recipients you stated that "Upon careful consideration and in order not to have an appearance of 'conflict of interest' our by-laws will contain this amendment: 'no child of, grandchild of, siblings of or relative of our Aunt will be able to qualify for the scholarship.'"

In Letter 2, we asked you to provide more information on the criteria that would be used in determining whether reimbursement should be provided to a student; you stated in Letter 3 that the scholarship program had been deleted.

Lastly, in your Articles of Incorporation you stated that you would engage in "community development from the aspect of self-development on a non-profit basis." In Letter 2, we asked you to explain what you meant by the terms "community development" and "self-development" and to "describe the type of activities you will engage in to promote these purposes." In Letter 3, you defined "community development" by stating that:

Community Development aims to create conditions for the development of sustainable and equitable communities. Foundation seeks to improve the quality of life and opportunity in an urban setting by the reduction of poverty and injustice. We also support other community-based (tax exempt) organizations that mobilize their assets and natural resources in responsible and fair manner.

Additionally you defined "self-development" as:

Self-development constitutes self-improvement through mentoring, training and improvement of skills related to managing personal finances, improvement of parenting and life skills.

You failed to provide or describe any specific activities that you will engage in to promote community development or self-development. In fact, in your previous response you stated that you do not plan to engage in the rehabilitation, sale or rent of properties, credit counseling or debt management programs, nor any down payment assistance programs.

On your Form 1023 application you indicated that you were a supporting organization, described in section 509(a)(3) of the Code, however you did not provide enough information to meet any of the required tests. When asked to provide further information you stated that you did not qualify as a supporting organization and did not meet Tests 1, 2, or 3 as defined in Schedule D. You further explained that you wanted to be considered a publicity supported charity. In a fax received subsequent to the filing of your application you requested an advance ruling on public charity status, however, you later withdrew that request because you feel you are "qualified for a definitive ruling after two years." In Letter 2, you were asked to submit detailed financial information in order to prove your public support status. You failed to provide such documentation in your response, Letter 3.

In your response you state that you had "Zero" actual gifts, grants and contributions "to date" and did not submit any information regarding your actual expenses. With regard to future expenses you provided the following response:

In State there is (according to 2007 statistics) a total of \$ _____ in the Human Services group and \$ _____ in the Community Improvement Group (total = \$ _____) available funds, according to 2007 NTEE Code. The Foundation has capacity building skills to handle 0.025% of this total to accomplish our goal (\$ _____). This will be the projected amount to calculate future expenses.

In that same letter you provided an itemized list of future expenses but did not indicate the likely sources or revenue to cover those expenses.

LAW:

Section 501(c)(3) of the Internal Revenue Code ("Code") provides, in part, for exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("Regulations") states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that "charitable" includes the promotion of social welfare by organization designed to lessen neighborhood tensions; eliminate prejudice and discrimination; defend human rights and civil rights secured by law; and combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(1)(3)(ii) of the Regulations provides that museums and other similar organizations are considered educational, so long as the organization meets the requirements for exemption under section 501(c)(3) of the Code.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will

be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Rev. Rul. 66-103, 1966-1 C.B. held that a nonprofit organization that provides awards and grants, including scholarships and fellowship grants, to needy individuals to enable them to continue their work in the creative arts, as well as to continue their education and studies, with no monetary benefit to the donor organization, is entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Rev. Rul. 69-257, 1969-1 C.B. held that a nonprofit organization that awards scholarships to individuals on the basis of scholastic ability rather than financial need qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 75-199, 1975-1 C.B. 160, held that awarding scholarships on a preferential basis to family members and relatives of a charitable trust's grantor is not consist with exempt purposes.

Rev. Rul. 75-286, 1952-2 C.B. 210, held that an organization with membership limited to the residents, property owners, and business operators within a city block and formed to preserve and beautify the public areas on the block did not qualify for section 501(c)(3) status. The Service reasoned that the organization served the private interests of its members because of the restricted nature of the membership and the limited area in which the improvements were made.

An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. American Science Foundation v. Commissioner, T.C. Memo. 1986-556; La Verdad v. Commissioner, 82 T.C. 215, 219 (1984); Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983). The organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3). Share Network Foundation v. Commissioner, T.C. Memo. 1999-216. As recently stated by the U.S. Court of Federal Claims, "vague generalizations and conclusory expectations are insufficient to demonstrate that the application meets the operational test." New Dynamics Foundation v. United States, 70 Fed.Cl. 782, 802 (2006), citing Church in Boston v. Commissioner, 71 T.C. 102, 106-07 (1978).

In Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969), cert. den., 397 U.S. 1009 (1970), the court, without considering the organizations beliefs, held that it did not qualify for exemption under IRC 501(c)(3) because its net earnings inured to the organization's founder and members of his family. The organization argued that it had paid its founder for expenses incurred in connection with his services, made reimbursements to him for expenditures on its behalf, and made some payments to him as repayments on a loan. The organization could produce no evidence of contractual agreements for services, documents evidencing indebtedness, or any explanation regarding the purposes for which expenses had been incurred.

In Callaway Family Association v. Commissioner, 71 T.C. 340 (1978), the court held that a family association formed as non-profit corporation to study immigration to and migration within the United States by focusing upon its own family history and genealogy did not qualify for tax exemption under section 501(c)(3) of the Code because the organization served the private

interests of the members. The organization permitted anyone to join its association however it solicited its members by means of letters directed primarily to members of the Callaway family. The court stated that, "Whether there were 6 or 600 members, it is evident that they joined only because the purpose and activities of the organization were 'for' and 'about' the Callaways."

In Living Faith, Inc. v. Commissioner, 950 F. 2d 365 (7th Cir. 1991) affg 70 T.C. 352 (1978), the court held that a vegetarian restaurant and health foods store that adhered to the principles of the Seventh Day Adventist Church was not operated exclusively for exempt religious purposes, but rather for a substantial commercial purpose. The court examined the method of operations to infer the purposes. Although the organization catered to the dietary restrictions of the Church, its primary activities were managing a restaurant and health food store, operated in competition with commercial entities, charging competitive prices set by formulas common in the retail food business, and using commercial promotional methods.

In Miss Georgia Scholarship Fund, Inc., v. Commissioner, 72 T.C. 267 (1979), an organization formed to distribute scholarships to contestants in a state beauty pageant did not qualify under section 501(c)(3) of the Code because its primary purpose was to serve impermissible private interest by requiring that contestants agree to perform services for the organization should they win.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), the tax court held that it did not qualify for exemption under section 501(c)(3) of the Code because it was operated for the benefit of the founder and his family and it could not be shown that no part of its net earnings inured to the benefit of the founder and his family. The court found that the organization was, at all times, "completely dominated by the family-a father, mother and son." They were the only voting members, composed the board of directors and were in a position to control the operations and activities of the organization indefinitely. The family could, without challenge, dictate the organizations programs, operations, budget, and spend its funds. The tax court stated:

While this domination of petitioner by the [founder and his family], alone may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status. It calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3).

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

RATIONALE:

The information provided in your Form 1023 and supporting documentation is insufficient for us to conclude that you are operated exclusively for purposes described in section 501(c)(3) of the Code. Even if we considered the information provided sufficient to make such a determination,

you have not shown that you are operated for public rather than private purposes as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, supra. We find that you are primarily operated to serve the private interests of the Family.

The information you provided in your application and your supporting documentation, including your responses to repeated requests for more information did not provide sufficient detail to conclude that you are operated for an exempt purpose. Though you describe several activities that may be charitable in nature your organization is not actually carrying out those activities. Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3) of the Code. See Share Network Foundation v. Commissioner, supra. See also New Dynamics Foundation v. United States, supra ("vague generalizations and conclusory expectations are insufficient to demonstrate that the application meets the operational test.") Rev. Proc. 90-27, supra, states that you have the burden of providing sufficient documentation or other substantive information regarding your activities and operations in order to establish that you will clearly meet the particular requirements of the section under which you are claiming exemption. You have failed to meet the required burden and have not provided enough information to establish that you are operated for any exempt purpose; therefore, you are not entitled to tax exempt status under section 501(c)(3).

For example, you represented that one of your primary activities would be the construction and operation of M, a museum and/or library in honor of Aunt. While the operation of a museum and library may be considered an educational or charitable activity, under section 1.501(c)(3)-1(d)(1)(3)(ii) of the Regulations, supra, the facts provided in your application indicate that another organization will actually be carrying out those activities. You provide that the museum and library will be operated by M, a separate entity which will seek its own tax exempt status. You failed to provide any information as to M's future operations and stated specifically that "This application is for the Foundation only and M will file under separate application." According to you, M's future operations are "TBD." You initially provided that one of your primary activities would be the "acquisition and funding of M," however, you have repeatedly failed to provide any information as to the projected construction costs to build M nor have you provided any clear statement as to what specific activities you would engage in with regard to the operation of M once it is completed.

You indicated that another one of your activities would be the operation of Website. You describe Website as the "family website" and provide that it is incorporated as a for-profit LLC. You state that it will be used primarily to provide history and inform the public of Aunt's legacy as well as to sell memorabilia related to Aunt. You failed to provide all of the requested information concerning how the items would be priced and the percentage of time you would spend on selling memorabilia on the internet. You did not provide any information to show how you would use Website to promote Aunt's legacy. In fact, the information you did provide indicated that your members would be selling items they created to the website in return for a fee, which is not an exempt activity. Like the organization in Living Faith v. Commissioner, supra, which operated a health foods store for substantially commercial purposes, you have failed to demonstrate how the sale of items on a for-profit website would further any exempt purpose under section 501(c)(3) of the Code.

You state that you will engage in community and self-development. Your stated purposes are to reduce poverty and injustice. While these purposes may be characterized as charitable in nature under section 1.501(c)(3)-1(d)(2) of the Regulations, supra, you did not submit any financial information indicating any projected expenditures aimed at reducing poverty and

injustice nor did you describe, with any particularity, specific program activities to carry out those purposes.

You state broad generalizations such as the fact that "self-development constitutes self-improvement through mentoring, training and improvement of skills related to managing personal finances, improvement of parenting and life skills" and that you "... support other community-based (tax exempt) organizations that mobilize their assets and natural resources in responsible and fair manner" but you consistently failed to demonstrate the manner in which you intend to actually carry out those goals. The courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information. "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities.... Such generalizations do not satisfy us that [Applicant] qualifies for the exemption." Peoples Prize v. Commissioner, *supra*.

The financial information you submitted is wholly inadequate to determine the likely sources of your revenues and likely expenditures. You failed to provide a projected budget detailing your largest program activity, the construction and operation of M. You did not provide any actual expenses to date and have received no contributions to date. You did not provide the detailed financial information concerning your actual operations that would be required to grant your request for a definitive ruling. Your application certainly does not contain an "open and candid" disclosure of all facts" which bear upon your "organization, operations, and finances" as required by the Tax Court in Bubbling Well Church of Universal Love, Inc. v. Commissioner, *supra*.

You have not presented the standards, criteria, procedures, or other means by which you intend to effectuate your current purposes, the anticipated sources of receipts, or the nature of contemplated expenditures, as required in Rev. Proc. 90-27, *supra*. As recently stated by the U.S. Court of Federal Claims, "vague generalizations and conclusory expectations are insufficient to demonstrate that the application meets the operational test." New Dynamics Foundation v. United States, *supra*.

Therefore, you have not established that you are operated for an exempt purpose within the meaning of section 501(c)(3) of the Code. Additionally, even if we concluded that you were operated for an exempt purpose, your operations and activities have changed since your initial application such that you are no longer engaged in many of the activities you initially described.

You provided that you would grant scholarships to deserving students. The giving of scholarships and grants based on need or merit is a charitable activity. See Rev. Rul. 66-103, *supra*; Rev. Rul. 69-257, *supra*. However, you specifically stated in Letter 3 that your scholarship program has been deleted.

Even if you were still engaged in scholarship activity the initial information provided on your scholarship program indicated that the grants may not actually qualify as scholarships. You provided initially that your scholarship recipients would have to agree to volunteer for M, as a condition of receipt of the award. As part of the volunteer work, you state that the students may be reimbursed for certain items. The grant or scholarship program cannot require the recipient to perform services for the exempt organization in return for awarding the grant or scholarship. See Miss Georgia Scholarship Fund, Inc. v. Commissioner, *supra*. Your scholarship program is similar to that described in Miss Georgia, where the contestants were required to perform services for the organization should they win the pageant. The court considered these payments

or awards to be compensation and held that this activity did not qualify as a scholarship activity. Because that was the only activity of the organization the court further found that it was not operated for an exclusively exempt charitable purpose.

As another example of how you have changed your operations since filing your application, you provided initially that you would conduct speaking engagements and other award acceptance activities related to Aunt. Providing information about Aunt, a historical figure, may in fact be considered useful to the individual and beneficial to the community, and thus qualify as educational. See section 1.501(c)(3)-1(d)(3)(i) of the Regulations, supra. However, you stated in your last response that those activities are not attributable to you but were made by your President's, Niece 1, personal choice.

Finally, even if the information was sufficient to demonstrate that you are operated for exempt purposes because you have not shown that you are operated for public rather than private purposes as required by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, supra, we still find that you are not operated for exclusively exempt purposes under section 501(c)(3) of the Code. Specifically, the information submitted thus far demonstrates that you are primarily operated to benefit the members of the Family.

Your membership is limited. In order to be a member of your organization an individual must be a niece or nephew of Aunt. The only other way to become a member is by a majority vote of all the members. You are similar to the organization described in Rev. Rul. 75-286, supra, where the Service ruled that the organization served the private interests of its members because of the restricted nature of its membership. You are also similar to the family in Callaway Family Association v. Commissioner, supra, where the court found that the organization's purposes and activities were primarily directed at the Callaway family. Like the Callaway's, your membership is targeted primarily at Family members.

Furthermore, you are governed by a board of directors that is controlled by members of the same family; in fact, the entire board is composed of nieces and nephews of Aunt. You are like the family in Bubbling Well Church v. Commissioner, supra which could, without challenge, dictate the organizations programs, operations, budget, and spend its funds.

For example, your initial application indicated that all of your board members would be compensated as consultants or various other independent contractors. You provided initially that you would purchase items from your members, including your board members, to sell on Website, a for-profit LLC. You also initially provided that you would purchase other items such as designs, artwork, logos, poetry, [and] sheet music created by members. Additionally, at first you provided that family members of the scholarship selection committee would be eligible to receive an award. Scholarships or grants may not be awarded based on preferential treatment for any member of the scholarship selection committee, trustees, directors or contributors family. See Rev. Rul. 75-199, supra. You did not provide any information to show that those family members would not receive preferential treatment. You failed to provide criteria, standards or other guidelines that the scholarship committee would use to ensure a blind selection process. An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. American Science Foundation v. Commissioner, supra.

You have since removed the ability of family members to receive scholarships and have stated that you will no longer engage in a scholarship program, and although you later stated that no

board members would be providing any services and that you would not purchase items from members, like the family in Bubbling Well Church, *supra*, it is not clear from the facts that the family could not continue to dominate the organization. The court explained that while domination of the organization by the family alone "may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status." Absent an "open and candid disclosure" it can not be shown that you are operated for public rather than private purposes as required by the regulations.

CONCLUSION:

The information you provided in your application and supporting documentation, including your responses to repeated requests for more information did not provide sufficient detail to conclude that you are operated for an exempt purpose described in section 501(c)(3) of the Code.

Even if we considered the information you did provide sufficient to make such a determination, you have not shown that you are operated for public rather than private purposes as required by Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, *supra*. We find that you are primarily operated to serve the private interests of the Family.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file Federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Debra Cowen

Robert Choi
Director, Exempt Organizations
Rulings & Agreements